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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96865; File No. SR-IEX-2023-01]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend IEX Rule 11.190(e) to Offer Users an Additional Option for How to Apply the Exchange's Existing Anti-Internalization Functionality to Their Orders

February 9, 2023

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on February 2, 2023, the Investors Exchange LLC (“IEX” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,⁴ and Rule 19b-4

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

thereunder,⁵ IEX is filing with the Commission a proposed rule change to amend IEX Rule 11.190(e) to offer Users an additional option for how to apply the Exchange's existing anti-internalization functionality to their orders and to make conforming and clarifying changes to the rule. The Exchange has designated this rule change as "non-controversial" under Section 19(b)(3)(A) of the Act⁶ and provided the Commission with the notice required by Rule 19b-4(f)(6) thereunder.⁷

The text of the proposed rule change is available at the Exchange's website at www.iextrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend IEX Rule 11.190(e) to offer Users⁸ an

⁵ 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4.

⁸ Pursuant to IEX Rule 1.160(qq), a User means any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to IEX Rule 11.130. Member is

additional option for how to apply the Exchange’s existing anti-internalization group identifier (“AIQ”) functionality to their orders. Specifically, the Exchange proposes to amend IEX Rule 11.190(e)(2)(E) to allow Users to modify the way a newer order designated with the “Decrement Larger – Original Order Quantity”⁹ AIQ functionality interacts with older orders also subject to anti-internalization. The Exchange also proposes to make conforming and clarifying changes to IEX Rule 11.190(e)(2).

IEX offers optional anti-internalization functionality that enables a User to prevent two of its orders from executing against each other. To utilize IEX’s optional anti-internalization functionality, a User adds a unique identifier of its choosing to an order, thereby designating the order as subject to anti-internalization (the “AIQ identifier”).¹⁰ Orders that have the same AIQ identifier and originate from the same MPID, User, or Member Affiliate¹¹, as specified by the User¹², are part of the same “AIQ group.”¹³ And any active order that is part of the same AIQ group is prevented from executing against a resting opposite side order that is part of the same AIQ group.

Users seeking to apply AIQ to their orders also include one of five modifiers to their orders, which determines the interaction between two orders within the same AIQ group that would otherwise execute against each other (“AIQ modifier”).¹⁴ The AIQ

defined in IEX Rule 1.160(s), and Sponsored Participant is defined in IEX Rule 1.160(l).

⁹ See IEX Rule 11.190(e)(2)(E).

¹⁰ See IEX Rule 11.190(e)(1)(A).

¹¹ See IEX Rule 11.190(e)(1)(B)(i).

¹² Users may elect to enable anti-internalization functionality on an IEX Port Request Form, designating whether such functionality should be applied on an MPID, User, or Member Affiliate basis.

¹³ See IEX Rule 11.190(e)(1)(B).

¹⁴ See IEX Rule 11.190(e)(1)(C).

modifier on the order with the newer timestamp controls the interaction between the two orders in an AIQ group.¹⁵ The five AIQ modifiers are: 1) cancel the older of the two orders (“CO”); 2) cancel the newer of the two orders (“CN”); 3) cancel both orders (“CB”); 4) cancel the smaller of the two orders (“CS”); or cancel the smaller of the two orders and decrement the size of the smaller order from the larger order (“DLO”).

In particular, IEX Rule 11.190(e)(2)(E) provides for the following functionality if the newer order is marked with the DLO AIQ modifier:

1. If both the newer and older orders are the same size, both orders are cancelled back to the User by the System¹⁶; or
2. If the newer order is larger than the older order, the size of the newer order is decremented by the size of the older order and the older order is cancelled back to the User by the System; or
3. If the newer order is smaller than the older order and the older order is also marked with the DLO AIQ modifier, the size of the older order is decremented by the size of the newer order and the newer order is cancelled back to the User by the System; or
4. If the newer order is smaller than the older order and the older order is marked with an AIQ modifier other than the DLO AIQ modifier, both orders are cancelled back to the User by the System.

Proposal

Based upon informal feedback from Members, IEX is proposing to allow Users to override the default functionality of the DLO AIQ modifier that IEX applies when the newer order is smaller than the older order and the older order is not designated with the DLO AIQ modifier, which is described in the fourth list item, above. IEX is not proposing to modify any of the DLO AIQ functionality described in the first through

¹⁵ See IEX Rule 11.190(e).

¹⁶ See IEX Rule 1.160(nn).

third of the above list.

As proposed, if the newer order is smaller than the older order, the older order is marked with an AIQ modifier other than the DLO AIQ modifier, the older order is not routable¹⁷, and the User instructed the Exchange to disregard the older order's AIQ modifier; then the System would decrement the size of the larger older order by the size of the smaller newer order (without changing the older order's AIQ modifier) and cancel the smaller newer order instead of canceling both orders.

Thus, IEX proposes to modify IEX Rule 11.190(e)(2)(E) to specify the interactions between two orders in the same AIQ group when the newer order is marked with the DLO AIQ modifier. Specifically, IEX proposes to delete the first, third and fourth sentences of IEX Rule 11.190(e)(2)(E), and amend the rule to read as follows:

Decrement Larger – Original Order Quantity (“DLO”). If the newer order is marked with the DLO AIQ modifier, the following describes the manner in which such orders will interact:

- (i) If both orders are equivalent in size, then both orders will be cancelled back to the originating User.
- (ii) If the newer order is larger than the older order, then the size of the larger order will be decremented by the size of the smaller order, and the smaller order will be cancelled back to the originating User.
- (iii) If the newer order is smaller than the older order, and:
 - a. the older order is also marked with the DLO AIQ modifier, then the size of the older order will be decremented by the size of the newer order, and the newer order will be canceled back to the originating

¹⁷ IEX rejects routable orders designated with a DLO AIQ modifier, see IEX Rule 11.190(e)(8), due to technical limitations that prevent the IEX router from identifying that the size of a routable order has been decremented pursuant to IEX Rule 11.190(e). For the same reason, IEX is proposing to not allow decrementing of an older routable order even if the User has instructed the Exchange to disregard the older order's AIQ modifier.

User.

- b. the older order is marked or designated with any AIQ modifier other than DLO, and the User did not provide a standing instruction for the Exchange to disregard the AIQ modifier of the older order if the newer order is marked with the DLO AIQ modifier, then both orders will be canceled back to the originating User.
- c. the older order is marked or designated with any AIQ modifier other than DLO, the User provided a standing instruction for the Exchange to disregard the AIQ modifier of the older order if the newer order is marked with the DLO AIQ modifier, and:
 - i. the older order is not routable, then the size of the older order will be decremented by the size of the newer order, and the newer order will be cancelled back to the originating User.
 - ii. the older order is routable, then both orders will be cancelled back to the originating User.¹⁸

With the exception of proposed IEX Rule 11.190(e)(2)(E)(iii), which specifies how a User may override the default DLO AIQ functionality (unless the older order is routable), the proposed changes set forth above to the text of IEX Rule 11.190(e)(2)(E) simply clarify the existing functionality of the DLO AIQ modifier.

Additionally, IEX proposes to make conforming and clarifying changes to IEX Rule 11.190(e)(2)(A)-(D). Specifically, IEX proposes to remove the first sentence of each of these subparagraphs, because they restate language found in IEX Rule 11.190(e) about how an active order subject to AIQ will not execute against resting opposite side orders within the same AIQ group. IEX also proposes to add clarifying language to subparagraphs (A)-(D) of IEX Rule 11.190(e)(2) clarifying that the interaction between

¹⁸ See proposed IEX Rule 11.190(e)(2)(E).

two orders in the same AIQ group is determined by the newer order's AIQ modifier.

Finally, IEX proposes to add language clarifying that if the criteria in that subparagraph are met, then the two orders will interact in the specified manner.

The proposed rule change is designed to provide additional flexibility to Users in how they implement self-trade prevention provided by the Exchange, and thereby better manage their order flow and prevent undesirable executions or the potential for “wash sales” that may occur as a result of the speed of trading in today's marketplace. Based on informal discussions with Users, the Exchange believes that the proposed additional anti-internalization functionality will be useful to Users in implementing their own compliance controls. And the additional AIQ functionality may assist Members in complying with certain rules and regulations of the Employee Retirement Income Security Act (“ERISA”) that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts.

The Exchange notes that, as with the current anti-internalization functionality offered by IEX, use of the proposed new DLO AIQ functionality will not relieve, or otherwise modify the duty of best execution owed to orders received from customers.¹⁹ As such, market participants using the AIQ modifiers will continue to be obligated to take appropriate steps to ensure that customer orders that do not execute because they were subject to anti-internalization ultimately receive the same price, or a better price, than they would have received had execution of the orders not been inhibited by anti-

¹⁹ See Supplementary Material .01 to IEX Rule 11.190(e).

internalization.²⁰ Further, as with current rule provisions, Market Makers²¹ and other Users may not use AIQ functionality to evade the firm quote obligation, as specified in IEX Rule 11.151(b), and the AIQ functionality must be used in a manner consistent with just and equitable principles of trade.²² For these reasons, the Exchange believes the proposed new optional DLO AIQ functionality offers Users enhanced order processing functionality that may prevent potentially undesirable executions without modifying broker-dealer best execution obligations.

IEX notes that this proposed rule change is functionally identical to one of the anti-internalization options offered by the Cboe BZX Exchange, Inc (“BZX”), with the exception that the BZX rule allows a User to decrement an older order that is routable.²³

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁴ in general, and furthers the objectives of Section 6(b)(5),²⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public

²⁰ Id.

²¹ See IEX Rule 14.002(a)(20).

²² See Supplementary Material .02 and .03 to IEX Rule 11.190(e).

²³ See BZX Rule 11.9(f)(3).

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

interest because allowing Users to apply DLO AIQ functionality to their orders irrespective of if the newer order is larger than the older order or if the older order has the same AIQ functionality (which is not a requirement for any other AIQ modifier), will provide Users with additional flexibility with respect to how they implement self-trade protections provided by IEX that may better support their trading strategies and compliance controls. Users that prefer the current DLO AIQ functionality can continue to use it without any modification (i.e., this change will only apply if the User specifically instructs the Exchange to override the current DLO AIQ functionality).

Additionally, IEX believes that, as discussed in the Purpose section, allowing Users the option of having an order designated with a DLO AIQ modifier decrement the larger of the two orders with which it would otherwise execute may encourage Users to use the Exchange's optional AIQ functionality. As noted in the Purpose section, IEX believes that providing Users with more flexibility and control over the interactions of their orders better prevents undesirable executions or the potential for "wash sales" that may occur as a result of the speed of trading in today's marketplace. And the ability to override the default DLO AIQ modifier functionality may better assist Members in complying with certain ERISA rules and regulations that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts.

And the Exchange believes that the proposed non-substantive conforming and clarifying changes to IEX Rule 11.190(e)(2) are consistent with the protection of investors and the public interest because they will have no impact on the Exchanges anti-internalization functionality, but rather simply provide consistency and clarity in IEX's

description of the AIQ modifiers, thereby reducing the potential for confusion of any market participants.

Finally, as discussed in the Purpose section, the Exchange notes that this proposed rule change is functionally identical to the functionality at BZX with the exception of IEX not allowing a routable order to be decremented.²⁶ Consequently, the Exchange does not believe that the proposed rule change raises any new or novel issues not already considered by the Commission.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposal is designed to enhance IEX's competitiveness by providing additional flexibility to Users applying the Exchange's optional anti-internalization functionality, thereby incentivizing Users to send orders to IEX and increase the liquidity available on the Exchange. Additionally, the proposed rule change is designed to assist Users with compliance with the securities laws that prohibit wash trading as well as ERISA requirements. The Exchange also notes that the proposed new DLO AIQ modifier functionality, like the Exchange's current anti-internalization functionality, is completely optional and Users can determine on an order-by-order basis whether to apply anti-internalization protections to orders submitted to the Exchange.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard, IEX notes that there is no barrier to other national

²⁶ See supra note 23.

securities exchanges adopting a similar modification to their equivalent AIQ modifiers.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As proposed, all Users will continue to be eligible to use the Exchange's anti-internalization functionality.

Further, the proposed conforming and clarifying changes to IEX Rule 11.190(e)(2) are not designed to address any competitive issue, but rather to provide additional clarity in IEX's rulebook.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A)²⁷ of the Act and Rule 19b-4(f)(6)²⁸ thereunder. Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4²⁹ because it merely provides additional flexibility for

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f)(6).

²⁹ 17 CFR 240.19b-4(f)(6).

the use of AIQ functionality which, as discussed above, is substantially identical to an existing rule of another exchange with the exception of BZX allowing the decrementing of a routable order.³⁰ Thus, IEX does not believe that the proposed change raises any new or novel material issues that have not already been considered by the Commission in connection with existing anti-internalization functionality offered by IEX and other national securities exchanges.

Accordingly, the Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act³¹ and paragraph (f)(6) of Rule 19b-4 thereunder.³²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)³³ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

³⁰ See supra note 23.

³¹ 15 U.S.C. 78s(b)(3)(A).

³² 17 CFR 240.19b-4.

³³ 15 U.S.C. 78s(b)(2)(B).

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-IEX-2023-01 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-IEX-2023-01. This file number should be included in the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to

File Number SR-IEX-2023-01 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Sherry R. Haywood,

Assistant Secretary.

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³⁴ 17 CFR 200.30-3(a)(12).